

## **REMARKS**

Claims 1-9 are pending in this application. By this Amendment, claims 2, 3, and 6 have been canceled without prejudice or disclaimer. Claim 1 has been amended to incorporate the features of claim 6. Claims 1 and 8 have been amended to more particularly point out and distinctly claim the organic transition metal compound, and claim 9 has been amended to more particularly point out and distinctly claim the catalyst system, support for which can be found at pages 6-10, and 16-23. Claims 7 and 8 have been amended to address informalities pointed out by the Examiner. Entry and consideration of these amendments are earnestly requested as they do not introduce new matter.

### ***Claim Objections***

In response to the Objection to claim 3, this claim has been cancelled without prejudice or disclaimer, so the Objection is now moot. In response to the Objections to claims 7 and 8, appropriate correction has been made. Reconsideration and withdrawal of the Objections respectfully is requested.

### ***Claim Rejections***

#### **Rejections Under 35 U.S.C. 102**

- A. Response to rejection of claims 1-3, and 9 under 35 U.S.C. §102(b), as being anticipated by Lipian et al.

In response to the rejection of claims 1-3, and 9 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,455,650 of Lipian et al. (“Lipian”), Applicant has amended the claims to incorporate the features of claim 6 (catalyst support), thereby obviating this Rejection. Reconsideration and withdrawal of the Rejection respectfully is requested.

Rejections Under 35 U.S.C. § 103

B. Response to rejection of claims 1-5, and 9 under 35 U.S.C. §103(a) as being unpatentable over Epstein et al. in view of Ivanova et al.

In response to the rejection of claims 1-5, and 9 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,895,771 of Epstein et al. (“Epstein”) in view of *Chem. Eur. J.*, 2001 of Ivanova et al. (“Ivanova”), Applicant has amended the claims to incorporate the features of claim 6 (catalyst support), thereby obviating this Rejection. Reconsideration and withdrawal of the Rejection respectfully is requested.

C. Response to rejection of claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over Epstein in view of Ivanova and further in view of Göres et al.

In response to the rejection of claims 7 and 8 under 35 U.S.C. 103(a) as being unpatentable over Epstein in view of Ivanova and further in view of U.S. Patent No. 6,583,238 of Göres et al (“Göres”), Applicant respectfully submits that a *prima facie* case of Obviousness has not been made out, and traverse the rejection.

With respect to a rejection under 103(a), the U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness. Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. See MPEP §2143. Finally, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. (BNA) 580 (C.C.P.A. 1974). The threshold showing required under §103 has been discussed above.

The Examiner has acknowledged that Epstein does not disclose fluorinated aluminates other than [Al(OC(Ph)(CF<sub>3</sub>)<sub>2</sub>)<sub>4</sub>] and [Al(OC(Me)(CF<sub>3</sub>)<sub>2</sub>)<sub>4</sub>]. The Examiner has also acknowledged that Epstein does not disclose supported catalysts. However, in addition, Epstein

at most only discloses the use of non-bridged metallocene catalyst systems. Clearly, Epstein does not teach the use of the organic transition metal compounds recited in the current claims. There would be no reasonable expectation of success in modifying Epstein using Ivanova and Göres to arrive at the current claims, as suggested by the Examiner. Certainly, this is not a situation with a finite, and in the context of the art, small or easily traversed, number of options that would convince an ordinarily skilled artisan of obviousness. *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.* Slip Op. 2007-1223, 2008 U.S. App. LEXIS 6786 (Fed. Circ., Mar. 31, 2008) Applicant therefore respectfully submits that no *prima facie* case of Obviousness has been made out by the Examiner.

Reconsideration and withdrawal of the Rejection respectfully is requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Should the Examiner have questions or comments regarding this application or this Amendment, Applicant's attorney would welcome the opportunity to discuss the case with the Examiner.

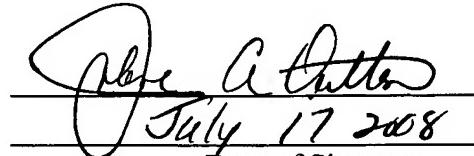
The Commissioner is hereby authorized to charge U.S. PTO Deposit Account 08-2336 in the amount of any fee required for consideration of this Amendment.

This is intended to be a complete response to the Office Action mailed January 17, 2008.

Respectfully submitted,

  
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I hereby certify that this correspondence is being deposited with sufficient postage thereon with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 17, 2008.

  
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John A. Cutler  
July 17 2008

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